IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 875 OF 1992

Jaswantraj Pokhraj Shah ..Petitioner

versus

Mahendra P. Shah, through deceased through his legal heirs and representatives Smt. Roopkumar w/o. Mahendra Shah & Ors. ..Respondents

Mr. S. P. Kanuga for the Petitioner.

Mr. K. R. Parekh for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 6TH NOVEMBER, 2006

ORAL ORDER :

1. Heard Counsel for the petitioner and the Respondents.

2. The petitioner is a tenant under the Bombay Rent Act. The suit for ejectment was filed against him by the landlord for possession of the suit premises on the ground of non payment of rent from

1.5.1969. The suit was decreed and the defendant was directed to hand over possession of the premises. The defendant preferred an appeal against that judgment and decree. The appeal also came to be dismissed, and, therefore, this petition.

3. Main contention of Mr. Kanuga, Counsel for the petitioner was that in a notice served by the landlord before institution of the suit there was no demand for rent and therefore the suit on the basis of the said notice was not maintainable. My attention in this regard was drawn to Exhibit 'C' a copy of the notice to this petition and it was tried to be urged that in the entire notice there is no demand for payment of rent. Mr. Kanuga relied upon the judgment of the Gujarat High Court reported in **AIR 1983 Gujarat 18 Khimji Bhimji Majithia vs. Taraben Lalji Soni,** in support of his contention that the notice under Section 12(2) of the Rent Act must contain a specific demand of arrears of rent. In that case the landlady has given notice Exhibit 25 to the tenant. She has informed the tenant that he had hired the premises on rent, that he was in arrears of rent from 1.12.1973 to 30.6.1975 amounting to Rs.1,900/- and the tenant owed to her

all that amount including education cess etc. The tenant was further apprised that inspite of repeated demands, he did not pay the amount of the rent and the rent has become due for more than six months and the landlady was entitled to evict him on that count of non payment of rent.

4. This notice was interpreted by the Gujarat High Court as not in confirmity with the provisions of Section 12(2) of the Rent Act because there was no specific demand of arrears of rent. However, this submission of Mr. Kanuga is required to be rejected for the following reasons:

5. Firstly, this issue that the notice of the landlord dated 18.1.1971 Exhibit 'C' does not contain a specific demand and hence illegal notice, was not raised by the defendant before the trial court. Such a plea has not taken by him in his written statement. Consequently, no issue was framed by the trial court in this regard. Secondly, there was a tenancy agreement dated 25.7.1963 between the landlord and the tenant, which was Exhibit 'C' before the trial court. But the tenant went to the extent of denying his signature on the

agreement. The trial court found that such a plea was unreliable, and he is raising a false plea. Thirdly, the tenant has agreed to pay the rent of Rs.50/- because it was fixed as a standard rent pursuant to the order passed in the Standard Rent Application No. 425/SR of 1963 and then agreement was entered into between the parties on 25.7.1963. In any case, it is clear that prior to entering into an agreement the tenant has filed application for fixation of standard rent in the agreement Exhibit 'C' dated 25.7.1963. The tenant has agreed that the tenant shall also make all necessary arrangement for sanitary blocks at the land at his own costs and the tenant shall be liable to pay non agricultural tax also. Not only that before filing the suit i.e. RAE Suit No. 1628 of 1971 the landlord had filed a suit on the same ground of arrears of rent vide Suit No. 1135 of 1965, their consent terms were filed between the landlord and the tenant in that suit on 31.1.1969. Certified copy of the consent terms was filed on record of the suit No. 1682 of 1971 but the tenant went to the extent of denying the consent terms. These two facts, that is, denial of the agreement executed by him and denial of consent terms shows that the case of the tenant is totally

false, bogus and was rightly rejected by both the courts below. Record of the trial court as well as of the appellate court is before me, I meticulously perused the same page to page but I do not find any point of defence raised by the tenant which is just like a written statement in such kind of suits. However, from the narration of the facts by the trial court as well as by the appellate court, it is clear that neither before the trial court nor before the appellate court, the tenant raised this point that the notice was invalid because there was no specific demand.

6. In fact from the facts stated above it is clear that firstly the tenant filed application for fixation of standard rent then there was an agreement between the parties that the tenant should pay Rs.50/- as standard rent. Then the plaintiff filed earlier suit in which consent terms were filed In those consent terms tenant specifically agreed to submit to a decree in the suit. However, it was agreed between the parties that if the tenant pays in court compensation of Rs.50/- and Rs.250/- towards arrears by 10th of every month commencing from 10.3.1969 with all the arrears upto 31.3.1969

and also municipal taxes till 30.9.1969 are cleared with court costs, warrant of possession in the said suit will be stayed permanently. The appellate court has also observed that tenant complied with the consent terms with the result that decree in the suit came to be permanently stayed. In this background of the situation i.e. to repeat again tenant filing application for fixation of fair rent, then entering into agreement with the landlord about the terms of the lease, then landlord filing suit and both of them filing consent terms, it is clear that subsequent denial of the agreement as well as the consent terms is nothing but a false plea raised by the tenant. Therefore, notice issued by the landlord before institution of the second suit has to be considered in this background. Admittedly, this notice of the landlord dated 18.1.1971 is not a love letter written to the tenant inspite of the agreement and inspite of consent terms wherein he has undertaken to pay the rent regularly, he has failed to pay the rent regularly and he was in arrears for six months. It cannot therefore be said that merely because the word "demand" is absent in the said notice, the whole suit of the plaintiff can be frustrated.

7. There is a judgment of this Court reported in **2006(1) Bom. C.R. 519 Union of India & Ors. vs. Jethalal Ladhuram Maniar.** In that case demand for permitted increases was made without specifying any quantified amount. Even then it was held that such a notice was legal and valid. Therefore it is clear that the absence of word "demand" in the notice, does not disentitle the landlord from claiming the relief.

8. There is a second aspect to the matter under the Transfer of Property Act. This application of the tenant to pay the rent month to month if it is a monthly tenancy. Secondly under Section 12A of the Rent Act, which lays downs that **"A landlord shall not be entitled to recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy....."** It will be clear from the provisions of the Transfer of Property Act and the aforesaid provisions of Section 12A of Bombay Rent Act that it is not only the statutory obligation of the tenant to pay rent

but it is also a contractual obligation. In the background of the history given above, the argument of Mr. Kanuga cannot be accepted that because word "demand" was absent in the notice, the landlord should be non-suited. I am not in agreement with the view expressed by the Gujarat High Court, particularly, in the background of this case. Therefore, this contention which is raised for the first time in this petition and which was not raised before the trial court or before the appellate court and which was not raised in the point of defence filed by the tenant and upon which no issue was framed by the trial court or by the appellate court, cannot be considered now and even if it is considered, it is rejected for the aforesaid reasons.

9. Another thing is that even from the entire record, it does not appear that the tenant gave any reply to the notice of landlord dated 18.1.1971 i.e. the suit notice. Inspite of going through the entire record and proceedings, I could not find on record any reply and nothing was shown to me that any such reply was given or any such plea was raised by the tenant in his reply notice. Both the courts

below have also not referred in their judgment while stating the facts of the case about the tenants reply to this notice of the landlord. From the judgment of the trial court paragraph 2, it is clear that the tenant had not given reply to his letter cum notice. The trial court has observed that : **"The defendant further submitted that in view of the aforesaid premises, the defendant could not pay the amount of standard rent or reply to the said letter dated 1st May 1969 (which again must be 18th January 1971)."** It is therefore clear that the tenant is raising wholly unsustainable, false and frivolous plea to resist the decree of eviction that is against him. Both the courts below have given consistent findings against the tenant. There is absolutely no perversity. To the contrary the conduct of the tenant raising false pleas about the original agreement and the consent terms were rightly considered as circumstances against him in appreciation of evidence against him.

10. Here again one more aspect which needs consideration is evident from the judgment of the trial court is that the defendant went to the extent of contending that he was not served with the writ

of summons in the second suit. However, the trial court found that he has engaged Advocate Pandya to represent him, vakalatnama was also filed on 23.8.1971 and points of defence was filed on 23.8.1971. The trial court noted that the defendant has gone to the extent of saying that he has not instructed his Advocate and not filed the said points of defence. It is clear that the whole conduct of the defendant is liable to be condemned. He is playing with the legal procedure in his own way by raising totally false, bogus and unsustainable pleas and for all the reasons including existence of two concurrent findings against him, this petition is liable to be dismissed. Hence, Petition is dismissed. Rule is discharged with costs throughout.

(D.G. DESHPANDE, J.)

CORAM : D. G. DESHPANDE, J.
DATE : 7TH NOVEMBER, 2006

Ms. Bhaktwani A.G. i/b. Mr. S. P. Kanuga for the Petitioner.
Ms. Kunjal Sanghavi i/b. K. R. Parekh & Co. for the Respondents.

. Advocate for the Petitioner and the

Respondent present. The order was pronounced in this matter on 6.11.2006. Advocate for the Petitioner prays for staying the operation of this order because it is a decree for ejectment. Advocate for the Respondents has no objection for granting stay for one month, therefore, operation of this order is stayed for a period of four weeks from today.

(D.G. DESHPANDE, J.)